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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,834	01/15/2004	Jim Bumgardner	PD 1321.02 US	1833

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DVA / PIONEER DIGITAL TECHNOLOGIES
SUITE 200
2355 MAIN STREET
IRVINE, CA 92614

EXAMINER	
VENT, JAMIE J	

ART UNIT	PAPER NUMBER
2616	

DATE MAILED: 07/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/707,834	BUMGARDNER ET AL.	
	Examiner	Art Unit	
	Jamie Vent	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 May 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3,5,6,7,15,& 17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3,5-7,15 and 17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *15 January 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicant's arguments, filed on May 6, 2005,with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

The prior office actions are incorporated herein by reference. In particular, the observations with respect to claim language, and response to previously presented arguments.

Claims 1,3,5,6,15,and 17 have been amended.

Claims 2,4,8,9,10,11,12,13,14,16, and 18-21 have been cancelled.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2 of U.S. Patent No. 6,760,538 in view of Knudson et al (US 6141488).

Claim 1 in the instant application corresponds to Claim 2 in U.S. Patent No 6,760,583 with the additional limitations of:

- Receiving instructions to transfer one or more timeslots on one or more channels to said storage device, at least one of said timeslots including a user extended lead timeslot or a user extended trail timeslot.

It is noted that Knudson et al discloses a system as seen in Figure 4 wherein user extended lead timeslots element 80 and user extended trail timeslots element 82 as further described Column 7 Lines 40+. Thereby allowing the user to extend recording time of programs to allow the user to capture the entire program. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to use the teachings of Claim 2 of Bumgardner et al and incorporate the user extended lead and user extended trail timeslots, as disclosed by Knudson et al.

Applicant argues on page 7 that Bumgardner et al (US 6,670,538) describes "a conflict between a user extended lead timeslot and a user extended trail timeslot" and that the application describes "a conflict between a core timeslot and a user extended timeslot". It is noted in Claim 1 of the instant application states "..a first one of said timeslots including a user extended lead timeslot or a user extended trail timeslot". Therefore it noted that a core timeslot is not mentioned anywhere in the claim limitations and thereby the applicant does not overcome the double patenting rejection. Applicant is further reminded although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1, 3, 5, 6, 15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson et al (US 6,141,488) in view of Marsh et al (US 6,208,799).

[claims 1, 3, 15 & 17]

In regard to Claims 1, 3, 15, and 17, Knudson et al discloses a video recorder which has a method for transferring a broadcast signal to a storage device with an additional computer program comprising:

- Receiving instructions to transfer two or more timeslots on one or more channels to said storage device, a first one of said timeslots including a user extended lead timeslot or a user extended trail timeslot (Figure 3 receives various instructions regarding various timeslots and channels from the user who receives information about the timeslots and channels from Figure 2. Furthermore, it is well known in the art that in the recording environment, such as a VCR, allows the user to manually set timeslots due to personal recording preferences. Thereby meeting the limitations of user extended trail and lead timeslots);
- Determining if said instructions cause a conflict (Figure 3 Element 70 a conflict is determined);
- Determining one or more solutions to said conflict (Figure 3 Elements 72, 74, and 76 are solutions to the conflict);

- Providing a user an opportunity to choose one of said solutions to said conflict (Figure 3 Element 72 and 74 allows user to choose solution to conflict); and
- Resolving said conflict automatically, if said user does not choose one of said solutions, by choosing either said first or second timeslot (Figure 3 Element 76 no response from user prompts system to automatically resolve conflict); however, fails to discloses
    - the timeslots having a first priority, a second one of said time slots including a core timeslot having a second priority.

Marsh et al discloses a system wherein timeslots are adjusted in priority as described in Column 10 Lines 1-34. It is further seen the priority adjustments are made depending on set priority setting as further seen in Figure 5. Thereby allowing timeslots to record based on priorities that the user sets within the system to insure that the proper programs are recorded. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the recording system discloses, Knudson et al, and incorporate that timeslots having various priorities, as disclosed by Marsh et al.

[claim 5]

In regard to Claim 5, Knudson et al discloses a method for transferring a broadcast signal to a storage device, as previously disclosed in Claim 1, with the additional limitation of the first type is a user extended trail time slot less than a fixed interval and said second type is a core time slot, further comprising choosing said second type as having higher priority (Column 7 Lines 45+ states when the one-minute buffer segments/user extended trail time slots allow for recording of the program in its entirety; however, it can cause the beginning of the second program's core time slot to be lost until the buffer is complete. As seen in Figure 5, the system eliminates the trailing buffer/user extended trail time slot of a fixed interval when recording

consecutive programs in order to allow complete recording of the second type and giving the core time slot priority.)

[claim 6]

In regard to Claim 6, Knudson et al discloses method for transferring a broadcast signal to a storage device, as previously disclosed in Claim 1, with the additional limitation that transferring a broadcast signal to a storage device further comprises:

- Obtaining and examining each timeslot (Figure 7a Element 102);
- Establishing cumulative priority for each of said solutions based on each timeslot (Figure 7a Element 104); and
- Determining and choosing one or two lowest priority solutions to said conflict based on cumulative priority and present to user (Figure 7a Elements 106 and 108).

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson et al (US 6,141,488) in view of Marsh et al (US 6,208,799) in further view of Barton et al (US 6,233,389).

[claim 7]

In regard to Claim 7, Knudson et al discloses a step of determining if said instructions cause a conflict comprises:

- Determining a second number of timeslots to be transferred to said storage device (Figure 3 receives various instructions regarding various timeslots and channels from the user who receives information about the timeslots and channels from Figure 2 thereby determining additional timeslots to be transferred to the storage device as described in Column 7 Lines 40+);

- Determining a conflict exists if said first number is less than said second number (Figure 4 shows a conflict in recording between channel 4 and 5. It is determined that the first program Figure 4 element 82 has less priority (a lesser number) over element 84 therefore, allowing the second program to record the entire program as seen in Figure 5 elements 86 and 88 and described in Column 7 Lines 58-67 and Column 8 Lines 1-5);

However, lacks to disclose a method of determining a first number of tuners available in the system. Barton et al discloses a scheduling system incorporating multiple inputs as seen in Figure 2 elements 201-204. As further described in Column 4 Lines 15-23 it is determined how many multiple input sections (tuners) are present in the system by the media switch 205. By incorporating multiple tuners allow for the capability of recording multiple programs from multiple channels at the same program time.

Therefore, it would be obvious to one skilled in the art at the time of the invention to have a storage device with conflict resolution of programming of channels, as disclosed by Knudson et al in view of Marsh, and incorporate a system which has a multiple inputs (tuners), as disclosed by Barton et al.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contact Information

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamie Vent whose telephone number is 571-272-7384. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Groody can be reached on 571-272-7950. Effective July 15, 2005, the Central Fax Number will change to 571-273-8300. Faxes sent to the old number (703-872-9306) will be routed to the new number until September 15, 2005

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Jamie Vent